IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

TRAVIS DELL RADFORD,
Petitioner.

No. 2 CA-CR 2013-0471-PR
Filed January 28, 2014

Petition for Review from the Superior Court in Yavapai County
No. P1300CR201100161
The Honorable Celé Hancock, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Sheila Sullivan Polk, Yavapai County Attorney
By Jeffrey G. Paupore, Deputy County Attorney, Prescott
Counsel for Respondent

Craig Williams, Attorney at Law, P.L.L.C., Prescott Valley
By Craig Williams
Counsel for Petitioner

MEMORANDUM DECISION

Judge Espinosa authored the decision of the Court, in which Judge Eckerstrom and Judge Miller concurred.

E S P I N O S A, Judge:

¶1 Travis Radford petitions this court for review of the trial court's order dismissing his petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb that ruling unless the court clearly has abused its discretion. *See State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Radford has not met his burden of demonstrating such abuse here.

¶2 Radford was charged by indictment with continuous sexual conduct and sexual contact with his fiancée's daughter, a minor. Radford subsequently pled guilty to three counts of attempted molestation of a child. He signed the plea agreement and initialed each page, avowing that he had "read and approved of all of the previous paragraphs in this Plea Agreement." He stated at the change-of-plea hearing that his attorney had explained the terms of the agreement to him and that he understood it.

¶3 The plea agreement noted a sentencing range of five to fifteen years for each count, and specified that Radford would be sentenced to prison for the first count and placed on lifetime probation for the third count, but that the trial court would have discretion whether to impose a prison sentence or probation for the second count. At the change-of-plea hearing, the court also explained the available sentencing range, and Radford stated he understood the possible sentences and had not been promised anything "aside from what is written in the document itself."

¶4 At that hearing, the victim's mother asked that Radford be given a five-year sentence on the first count and be placed on probation on the remaining counts. She also stated her family had

forgiven Radford and they "want him back home." At sentencing, Radford's counsel emphasized that Radford had been "extremely intoxicated" each time he had molested the victim and that Radford was extremely remorseful. The state took no position at sentencing with regard to the length or type of sentence to be imposed. In discussing its weighing of the sentencing factors, the trial court told Radford that he "simply cannot commit this kind of crime against a 12 year old girl and expect that [he] will get a mitigated sentence." It imposed presumptive, consecutive, ten-year prison terms for the first two counts and lifetime probation on the third.

¶5 Radford filed a notice and petition for post-conviction relief, arguing the court abused its discretion because it did not give sufficient weight to mitigating evidence presented at sentencing and to the "[v]ictim's input." He further claimed that the court "reject[ed] a material provision in the plea agreement" by stating at sentencing that a mitigated sentence was unavailable. Finally, he asserted that trial counsel was ineffective in failing to move for withdrawal from the plea. The trial court summarily denied relief, and this petition for review followed.

¶6 On review, Radford reiterates the foregoing claims. We agree with the state that he waived in his plea agreement any claim that the trial court abused its discretion in its weighing of sentencing factors and in imposing sentence. The agreement provided that Radford "waives and gives up any and all motions, defenses, objections, or requests which he . . . has made or raised, or could assert hereafter, to the Court's entry of judgment against him . . . and imposition of a sentence upon him . . . consistent with this Plea Agreement." Nothing in the sentencing transcript suggests the court failed to consider any relevant information presented or committed any legal error in imposing sentence. *See State v. Cazares*, 205 Ariz. 425, ¶ 6, 8, 72 P.3d 355, 357 (App. 2003) (court abused sentencing discretion only if it "acted arbitrarily or capriciously or failed to adequately investigate the facts relevant to sentencing"; although court must give "due consideration" to mitigating evidence, it "is not required to find that mitigating circumstances exist merely because mitigating evidence is presented").

¶7 Radford claims, however, that the "totality of the circumstances" shows the parties intended for him to receive only concurrent, mitigated five-year terms for the first two counts, to be followed by probation on the third. Thus, he apparently reasons, the sentences imposed were inconsistent with the plea agreement. In essence, Radford contends that, because the state did not argue at sentencing that Radford should receive a longer sentence, it was bound by the victim's mother's wish that Radford receive the minimum sentence.

¶8 Radford has identified no authority that supports this remarkable legal proposition, and we find none. Although Radford is correct that, in interpreting a contract, a court must attempt to give effect to the parties' intent, *see Taylor v. State Farm Mut. Auto. Ins. Co.*, 175 Ariz. 148, 152, 854 P.2d 1134, 1138 (1993), he has identified nothing in the plea agreement that requires interpretation, *see Mejia v. Irwin*, 195 Ariz. 270, ¶ 12, 987 P.2d 756, 758 (App. 1999) (plea agreement subject to contract interpretation). The best indication of the parties' intent is the plea agreement's plain language. *See Mining Inv. Grp., LLC v. Roberts*, 217 Ariz. 635, 639, ¶ 16, 177 P.3d 1207, 1211 (App. 2008) ("Where the intent of the parties is expressed in clear and unambiguous language, there is no need or room for construction or interpretation and a court may not resort thereto."). That language unambiguously prescribed a sentencing range encompassing the sentences the court imposed. Moreover, the victim and her mother were not parties to that contract, the state does not represent the victim, and the victim does not direct the state's prosecution of a case. *See State ex rel. Romley v. Superior Court*, 181 Ariz. 378, 381-82, 891 P.2d 246, 249-50 (App. 1995). Thus, the victim's mother's statements to the court could not be construed as reflecting the state's position.

¶9 Radford also claims the trial court "materially changed the minimum sentence" provided for in the plea agreement when it stated its "policy" that Radford could not "'expect . . . a mitigated sentence'" for his crimes. But we agree with the court's explanation in its detailed order examining each of Radford's claims that its statement cannot reasonably be interpreted to express any general sentencing policy. Instead, the court's statement merely reflects its

evaluation of the evidence submitted relevant to Radford's punishment and its determination that a minimum sentence was inappropriate.

¶10 Radford also asserts counsel was ineffective in failing to assert that he was entitled to withdraw from the plea based on Rule 17.4(e), Ariz. R. Crim. P., because the court had effectively rejected the plea agreement by imposing the sentences it did. This claim necessarily fails because we have rejected his underlying argument that the court sentenced Radford in a manner inconsistent with the plea agreement.

¶11 For the foregoing reasons, although review is granted, relief is denied.